

**NEGOTIATION AND CAPACITY BUILDING  
IN MONTENEGRO**

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Workshop 5:  
Administration of Justice  
Podgorica, 28 June 2002

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## **I. Introduction**

The ECMI project “Negotiation and Capacity Building in Montenegro” was launched with the aim to establish a Track II informal negotiation process providing a forum for interethnic dialogue between Serbian and Montenegrin communities, which includes minority communities from the Sandžak border region. Through a series of workshops, the project aims to help promote dialogue, identify issues of common concern and assist in delivering concrete benefits as well as building confidence between the communities involved. By focusing the debate on the concrete needs of these communities, the project seeks to facilitate thinking about future interethnic relations in a less charged atmosphere, irrespective of the deeper political questions on the future constitutional arrangements of the two republics.

The project engages political party representatives, government officials and civil society groups (NGOs) in dialogue, while placing particular emphasis on establishing a Track II process with broader civil society involvement across all communities. In this way, the process broadens public debate and can function even when official government-to-government contacts prove difficult or impossible. Through engaging international and local experts, the project also seeks to provide the participants with external guidance on policy options in relation to each of the issues under review.

In a preparatory phase during the summer of 2001, field missions to Belgrade and Podgorica were carried out in order to conduct discussions with politicians, scholars and minority representatives to enlist their support and help identify issues of particular concern to all communities. Several issues – education, freedom of movement and regional economic development, and the administration of justice – were eventually identified to be dealt with in five separate workshops. The present report relates to the workshop on the administration of justice held in Podgorica (Montenegro) on 28 June 2002.

## **II. Background to the Workshop**

The ECMI negotiation and capacity-building project in Montenegro provides a forum for a structured stakeholder dialogue outside the confines of party or ethnic politics. By focusing on specific areas where concrete solutions to shared problems can emerge, the project delivers benefits outside the contentious issue of constitutional status which has affected Montenegrin politics and the relationship with Serbia. Nonetheless, the status negotiations were very much in the minds of participants of all ECMI workshops; the framework agreement reached between Serbia and Montenegro on 14 March 2002 under the tutelage of the European Union (and hence commonly called the ‘Solana agreement’) has not fundamentally changed that situation. However, the agreement followed the Yugoslav federal constitution in allocating responsibilities for education to the republics rather than the union/federation. This allowed the project to consider education issues without constant recourse to the uncertainty prevailing in Serbo-Montenegrin relations.

The administration of justice has a special resonance with minority communities. It is easy to feel that even generalized phenomena such as police brutality and incompetent courts are in fact instruments of oppression directed against specific communities. Such feelings cannot be discounted since they impact on the trust citizens will have in the institutions of government. They contribute to an atmosphere of insecurity and mutual distrust in which violence is an acute possibility at any time. Even though the behaviour of the security forces in Montenegro has improved over the last years, the brutal repression of ethnic minorities especially during the war in Bosnia and Herzegovina is vividly remembered by all who were affected, and the possibility of renewed violence is a constant threat to the security of these communities. It is not surprising that openness, tolerance and cooperation are not flourishing in such a climate.

Against this background, the debate at ECMI’s workshop on the administration of justice was animated and engaged. The workshop, the fifth under the ECMI Negotiation and Capacity-Building in Montenegro Project, was held in Podgorica on 28 June 2002 (see the ECMI report on Negotiation and Capacity Building in Montenegro – Workshop 4: Education, by Tobias Vogel).

The June workshop on education was the first to be held after the implications of the Solana agreement on future relations between Serbia and Montenegro had become more apparent. (A previous workshop on economic development had been held a week after the agreement of 14 March 2002.) The agreement, although not containing a detailed description of future relations, maintains the common state under the name of Serbia and Montenegro with limited joint competences, notably including the protection of national minorities.

### **III. Aim and Format of the Workshop**

The workshop on the administration of justice, held in Podgorica on 28 June 2002, aimed to identify additional problems that may be effectively addressed through a consultative policy dialogue which ECMI proposes to provide in the medium term. It became clear, however, that such a dialogue will be difficult indeed, given the deep concerns of the NGO and community representatives, political parties, and academics gathered in the workshop. It was noted that neither the Montenegrin nor the Serbian Ministries of Justice had chosen to have a representative attend the workshop, despite repeated invitation.

The workshop gathered individuals of various backgrounds, seeking to keep the group relatively small to enable a focused and in-depth discussion. Proceedings started with the presentation of a background paper exploring different aspects of the issue. The paper was based on several weeks of field research and drafted by the Humanitarian Law Centre in Belgrade, which also presented the paper to workshop participants.

#### **IV. Discussions of the Workshop**

The administration of justice is of central importance when it comes to creating trust between various groups, and between such groups and the government. Often, it is here that discrimination becomes most apparent. Moreover, the field of justice cross-cuts the private/public distinction to also include issues of labour discrimination, which are among the most widespread forms of discrimination and a constant concern of minority groups throughout the former Yugoslavia. The workshop concentrated on issues of justice on both sides of the border in the Sandžak, but many features and circumstances were familiar to participants from elsewhere as well.

Two main topics dominated the proceedings: ethnically motivated crimes against minorities (often committed by the security forces), and equal representation in the institutions of government (notably the judiciary and the police.)

Many crimes have been perpetrated against minorities on both sides of the Sandžak border, especially during the war in Bosnia and Herzegovina (1992-95). Lower-level police abuse in particular is a continuing issue for members of ethnic minorities. Among the main challenges for the workshop was to distinguish between general police misconduct and the clear, targeted mistreatment of minorities. Instances of both are abundant, even though they might be on the decrease overall. (Cases mostly occurred around 1993-4 and again around 2000.) The presentation of the background paper made it obvious how important this distinction is; at the same time, there is a tendency by affected individuals and groups to interpret any form of policy misconduct as discriminatory, a tendency that is a real factor in ethnic relations.

The background paper presented several cases from the 1990s and some more recent instances of abuse that prompted animated debate. Even the 'historical' cases are relevant for today's interethnic relations: the trust that was destroyed (or the mistrust that was reinforced) through the abuses themselves and the subsequent, and in many cases continuing, refusal of the authorities to prosecute is among the most important factors for successful ethnic relations in a society. One of the standard approaches by the police and investigating authorities was to construct a criminal past for victims, thereby discrediting their statements.



The background paper and the discussion it spawned highlighted the need for systematic documentation of misapplications of justice, a task for which it is difficult to find funding. Only in this way can the politicization of human rights be avoided as is necessary for an open debate.

The Montenegrin situation is specific in that a change took place around 1997, when Montenegro's independence became an issue. The federal army was increasingly seen as an occupier, while many policemen were supporters of independence. There were even cases where members of an ethnic minority fled the army and were protected by the police. After 1997, a process began that in any other situation would be considered normal, i.e., the population started seeing the police as a partner and having trust in it. However, other workshop participants warned that the Montenegrin police still continues believing in stereotypes of Roma as criminals and Albanians as terrorists. Better education of police officers could address this problem. An important test is their behaviour in routine traffic controls: the treatment of minorities in such everyday situations is indicative of the broader problems in interethnic relations. One participant mentioned being treated differently after stating his name (i.e., after being recognized as a member of a minority). Human rights violations at that level are often thought of as insignificant distractions from broader issues, when in fact they are a crucial indication for more fundamental problems in a society. At the same time, it is indisputable that massive violations of human rights have taken place in the very recent past, and government structures continue to refuse responsibility for such acts. There is, in the words of one participant, a policy of oppression aiming to exclude certain segments of the population from society; the logical conclusion of this policy is "ethnic cleansing."

Some participants described how the thin line between terrorism and legitimate political action enables the security forces to present political repression as crime control. Political extremism and fear are the most important ingredients for escalation to occur in such a climate.

One point was made over and over: that the present situation has deeper roots in a culture of impunity. Under Milošević, the state apparatus was in fact not in the service of the state but of the ruling faction. Government institutions served as instruments of

Milošević and his allies, depleting institutional capacity and trust. Indeed, the regime directly encouraged the maltreatment of minorities. A related point is that purely legal measures may not be sufficient to restore that trust; considerably more important are practical reforms of justice and the police.

Many citizens – especially minorities – are used to maltreatment by the police and do not know their rights, or are completely disillusioned regarding their realization. Thus, while legal reform is no doubt important and would send a positive signal, any subsequent failure to implement reform would only further contribute to insecurity and distrust. One aspect of that situation is the fact that many human rights trials have been dragging on for years with no conclusion in sight; such justice does not contribute to an atmosphere of openness and dialogue. In addition, many existing laws – including human rights and minority protection – are vaguely worded and leave much room for manipulation and reinterpretation.

A thorny issue the panel could only take note of concerns affirmative action, i.e., the establishment of quota systems and similar measures to ensure equal representation. One participant noted that positive discrimination in fact paves the way for negative discrimination as well, while others strongly defended quotas and proportional representation. Should such quotas apply to all minorities? Who defines what constitutes a minority? Should there be a threshold? And again, at a more fundamental level, would an unreformed police force become more transparent and accountable if it also included some minorities? An example presented in the discussion was the situation in neighbouring Bosnia and Herzegovina, where some cantons have a special regime providing for a duplication of offices to ensure ethnic representation. This has simply resulted in an even more unwieldy and untransparent bureaucracy and opened all sorts of opportunities for corruption and nepotism. At the same time, a purely merit-based recruitment system would be ‘discriminatory’ in situations where one ethnic group has better access to education, as is the case in Montenegro.

One participant also noted that affirmative action would not be welcomed by all minority leaders since it could potentially undermine their power within their own communities. Indeed, there was agreement that political change in Montenegro, as well as between Montenegro and Serbia, was most likely to come from

accommodation between elites – an outcome, several panelists concluded, that would be the worst for the communities concerned.

Some participants placed the blame for this situation overall on a “medieval” or authoritarian concept of the state, with one nation dominating all the others and no model of equality available. One participant expressed his belief that ‘ethnic cleansing’ of institutions is a first stage in the ‘ethnic cleansing’ of entire populations. According to his data, two-thirds of Montenegro’s Albanian population live abroad.

## **V. Recommendations**

One of the key insights of the workshop was that legislative action, while necessary and useful, will not by itself achieve a major improvement in interethnic relations. Laws need to be improved, safeguards provided, transparency enhanced, but beyond that, the police and judiciary need to become more inclusive with regard to minority representation, and the police in particular need to become accountable for their actions if further abuse is to be prevented. Against this background, specific recommendations proved difficult to articulate since so many factors impact on the nature of majority-minority relations in this field. Much of the discussion was spent reaching agreement on basic issues and preparing the ground for debate on more specific questions. It is therefore desirable to have a follow-on workshop building on the achievements of this one.

It was also noted that the administration of justice is among the areas most jealously guarded by governments as their exclusive, sovereign reserve and as such may be less responsive to international pressure and persuasion. Governments will find it easy to explain police abuse with the necessity of fighting terrorism and violent secessionism. It is not entirely clear what role an organization such as ECMI can play in this situation, even though providing a forum for open exchange was hailed as an important step.

## **VI. Follow-up Activities**

The participants of the workshop expressed the importance of continued monitoring of the human rights situation in the Sandžak and related legislative, administrative, and political developments. ECMI could provide an important link between organizations on the ground and the wider policy world to ease the isolation felt by many working on these issues.

### *Follow-up Workshop*

All participants expressed the wish to continue discussing the administration of justice and other vital issues of minority rights in the open forum of an ECMI workshop.

## **VII. Annex**

### **Annex A: Programme of the Workshop**

*Friday, 28 June 2002*

**10:00-10:15 Opening Words and Welcome**  
Tobias K. Vogel, ECMI

**10:15-11:45 Session 1: *Presentation and discussion of background paper***  
Goran Miletic, Humanitarian Law Centre, Belgrade

**11:45-12:15 Coffee Break**

**12:15-13:00 Session 2: *Discussion of key problems identified***

**13:00-14:00 Lunch**

**14:00-15:30 Session 3: *Discussion of possible solutions***

**15:30-16:00 Coffee Break**

**16:00-17:00 Closing Session of the Roundtable: *Summary of sessions and drafting of recommendations***

**19:00- Dinner**

**Annex B: List of Participants**

	<b>Name</b>	<b>Organization</b>
1	Bulih, Edina	Almanah Group
2	Camaj, Marko	
3	Camaj, Kolë	Montenegrin Helsinki Committee for Human Rights “Illyricum”
4	Delić, Sabhuda	Minister for the Legal Protection of National and Ethnic Groups (Montenegro)
5	Gjokaj, Luk	Foreign Ministry (Montenegro)
6	Janjić, Dušan	Forum for Ethnic Relations
7	Kerović, Atvija	Almanah Group
8	Kosanović, Mirna	Lawyers’ Committee for Human Rights
9	Miletić, Goran	Humanitarian Law Centre
10	Rastoder, Serbo	University of Montenegro
11	Jelinčić, Jadranka	Fund for an Open Society Serbia
12	Žigmanov, Tomislav	Open Society Foundation, Novi Sad

**ECMI Staff**

1	Vogel, Tobias K.	Project Leader, Sarajevo
2	Bieber, Florian	Senior Research Fellow, Belgrade
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